

HOW TO SET UP

A RAIF (RESERVED ALTERNATIVE INVESTMENT FUND)

DESCRIPTION

The Reserved Alternative Investment Fund (RAIF) is an operationally flexible and fiscally efficient multi-purpose investment fund regime for a well-informed investor.

The fund is managed by an external authorised Alternative Investment Fund Manager (AIFM) and is therefore subject to AIFM Directive¹ requirements. However it is not itself subject to CSSF product approval and enjoys a rapid time to market.

ELIGIBLE INVESTORS

Investment in a RAIF is limited to “well informed” investors that are able to adequately assess the risks associated with an investment in such a vehicle. These are defined as institutional investors, professional investors and any individual investor who has confirmed in writing that he adheres to the status of “well-informed” investor and who either invests a minimum of EUR 125,000 in the RAIF or has been assessed by a credit institution, investment firm or management company which certifies the investor’s expertise, experience and knowledge in adequately appraising an investment in the RAIF.

As an Alternative Investment Fund (AIF) managed by a regulated AIFM, the fund will benefit from the European passport established by the EU AIFM Directive.

The Management Company is required to issue a launch document in which it is stated that the RAIF is not subject to fund approval.

LEGAL FRAMEWORK

The RAIF was introduced by the Law of 23 July 2016 (the RAIF Law).

The RAIF is not subject to approval. However, it is an Alternative Investment Fund within the meaning of the AIFM Directive, managed by an authorised AIFM based in Luxembourg or within another EU Member State, as defined by the AIFM Directive.

The RAIF can benefit from the same structural flexibility and tax regime as the SIF and the SICAR.

Once the AIFM Directive passport becomes available for third party (non-EU) countries, the RAIF may be managed by an authorised AIFM based in a third party country.

LEGAL FORM

Contractual form:

Common fund (*fonds commun de placement* – FCP)

Partnerships:

Common limited partnership (*société en commandite simple* – SCS or CLP); special limited partnership (*société en commandite spéciale* – SCSp or SLP); partnership limited by shares (*société en commandite par actions* – SCA).

Corporate entities:

Public limited company (*société anonyme* -SA), private limited company (*société à responsabilité limitée* – S.à.r.l.); cooperative organised as a public limited company (*société coopérative organisée comme une SA* Scosa).

The RAIF may be set up as an umbrella structure with an unlimited number of compartments. The compartment of a RAIF can invest in one or more other compartments of the same RAIF.

CAPITAL BASE

The net assets of a RAIF must reach EUR 1.25 million within 12 months of the RAIF’s authorisation. Only 5% of the capital needs to be paid up on subscription.

¹ AIFMD: the EU Alternative Investment Fund Management Directive

² Supranational institutions are exempt from this rule

MANAGEMENT

A RAIF must be managed by an authorised AIFM². The AIFM may either be established in Luxembourg, in a Member State of the EU or in a third country³.

RAIFs managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the RAIF's shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

CENTRAL ADMINISTRATION

The central administration of the fund and the registered office (for an FCP, the seat of the management company; for partnerships and corporate structures, the seat of the company) must be in Luxembourg.

CUSTODY OF ASSETS

The eligible depositaries are Luxembourg established credit institutions and Luxembourg established investment firms fulfilling certain requirements laid down by the Law of 5 April 1993 on the financial sector, as amended. In addition to the type of depositaries described above, a new type of Luxembourg depositary, namely the professional depositary of assets other than financial instruments, was introduced by the Law of 12 July 2013.

ASSET MANAGEMENT

There are no limits with regard to eligible assets and contributions in kind or in cash are permissible. The fund is required to operate the principle of risk spreading but there are no hard and fast quantitative limits. A fund that is limited by its constituent documents to investing in risk capital is not required to operate the principle of risk spreading.

EXTERNAL AUDITING

The RAIF must appoint an independent approved Luxembourg auditor.

TAX REGIME

The tax regime of the RAIF is equal to that of a SIF. It is exempt from income and net wealth taxes and its distributions are exempt from withholding tax. It is subject to an annual subscription tax of 0.01% (certain exemptions exist).

A RAIF can, however, opt for being taxed as a SICAR where its sole object is to invest in risk capital assets. A RAIF that takes a corporate legal form (like the S.A., S.à r.l. or S.C.A.)

will be a normally taxable entity for income tax purposes, but with an exemption from its taxable basis for any profits and gains derived from securities representing risk capital. It will further be exempt from net wealth and subscription taxes. The RAIF organised as an FCP or limited partnership (SCS or SCSp) and that opts to be taxed as a SICAR is not liable to income, net wealth, or subscription taxes in Luxembourg.

The selected tax regime will be applicable to all compartments.

AUTHORISATION AND SUPERVISION

The RAIF requires no authorisation prior to launch and is only indirectly supervised via its manager which has to regularly report about its funds.

Within 20 days of its incorporation, the RAIF must be registered on a list created for that purpose within the Luxembourg Trade and Companies Register.

The Management Company notifies the CSSF (Circular 15/612) for onward information to ESMA.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

³ subject to the application of article 66 of the AIFMD